IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.432 OF 2006

Krantikari Suraksha Rakshak
Sanghathana.....Petitioner

Vs.

Assistant Labour Commissioner
Mumbai & Ors.....Respondents

Ms. Jane Cox for petitioners
Mrs. Lata Desai, for Respondent NO.3.
Mr. P.M. Palshikar, for Respondent No.2.
Mr. P.M. Mokashi, AGP for Respondent No.1.

**CORAM: F.I. REBELLO &**
**ANOOP V. MOHTA JJ.**
**DATE : 17th April,2006**

P.C.:

. Rule. Heard forthwith.

2. The petitioners had raised a dispute in respect of employees set out at Exhibit "A". It was their case that irrespective of the fact that those workmen having been registered with the respondent No.3 Board, for the period previous to they being registered with the Board they were direct employees of Respondent NO.2 and that the contract under which they were appointed was sham and bogus.

. The Conciliation Officer, who is Respondent No.1 in this case by communication of 17th November, 2005 was pleased to hold that as the Security Guards and company are registered with the Board the demand given under the Industrial Disputes Act cannot be taken into conciliation by the office. It is this communication which is the subject matter of the present challenge.

3. It is not necessary for us to set out the facts in extensio. Suffice it to say that the learned Counsel for the petitioner had relied on the judgment of a learned Single Judge of this Court in **Hindustan Lever Ltd. vs. Hindustan Lever Employees Union & Anr., 2001 I CLR 387**. In that case also they were security guards. They were registered with the Board. The company was also registered. Despite that, a complaint of unfair labour practice was filed under the provisions of M.R.T.U. & P.U.L.P. Act. The learned single Judge arrived at a conclusion that the contract was sham and that the workers even though they were registered with the Board were direct employees of the petitioners. We may clarify that we are not going into the issue as to whether in view of the subsequent judgment of the Apex Court in the matter of contract employees whether the Court under the M.R.T.P. & P.U.L.P. Act had jurisdiction. We are only relying on the proposition that it was open to the Court to have considered the issue.

. In so far as Industrial Disputes Act is concerned, to take the matter in conciliation, the Conciliation Officer should prima facie be satisfied that there is relationship of employer and workmen and the matter pertains to conditions of service. In other words there is prima facie an Industrial dispute. Once these ingredients are met the

Conciliation Officer is bound to submit a failure report to the Appropriate Government. It is then for the Appropriate Government to consider the provisions of Section 12 of the I.D. Act to decide whether to make a reference or not.

. In the instant case admittedly the workmen were working in the establishment of the company. It is their contention that the contract was sham and bogus and that the mere fact they were working for the contractor is of no consequence. The matter pertains to regularisation in service. In other words prima facie the three criteria required to bring the matter within conciliation have been satisfied.

4. Considering the above, we direct the Conciliation Officer to enter into conciliation and after hearing the parties to submit failure report to the Appropriate Government. The Appropriate Government thereafter within eight weeks on receipt of the failure report to take steps in conformity with Section 12 of the Industrial Disputes Act.

5. Rule made absolute accordingly. No order as to costs.

**(F.I.REBELLO, J.)**

**(ANOOP V. MOHTA, J.)**